

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

United States of America)	
)	Cr. No. 7:98-1169
vs.)	Cr. No. 7:00-0750
)	C/A No. 7:05-02171-HMH
Sonji Prince Pabellon,)	
)	OPINION & ORDER
Movant.)	

This matter is before the court on Sonji Prince Pabellon's ("Pabellon") motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255 (West Supp. 2005). After a thorough review of the facts and pertinent law, the court summarily dismisses Pabellon's motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 5, 1999, Pabellon pled guilty to one count of possession with the intent to distribute and distribution of crack cocaine. (Cr. No. 98-1169.) On May 27, 1999, Pabellon was sentenced to one hundred twenty-one (121) months' imprisonment ("first sentence"). After failing to self-surrender, an arrest warrant was issued. On July 19, 2000, Pabellon was arrested. On October 31, 2000, Pabellon pled guilty to failing to appear. (Cr. No. 00-0750.) Pabellon was sentenced to fourteen months' imprisonment ("second sentence") to be served consecutive to the first sentence. On May 2, 2002, Pabellon filed a motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255. (C.A. No. 02-1445.) This court summarily dismissed Pabellon's motion on both her first and second sentence as untimely on May 9, 2002.

II. DISCUSSION OF THE LAW

“[A] . . . § 2255 petition that is properly dismissed as time-barred . . . constitutes an adjudication on the merits for successive purposes.” Villanueva v. United States, 346 F.3d 55, 61 (2d Cir. 2003). “[A] prisoner seeking to file a successive application in the district court must first obtain authorization from the appropriate court of appeals.” United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003) (citing 28 U.S.C. § 2244(b)(3)). Pabellon has not obtained the pre-filing authorization necessary to proceed with the instance motion--a second or successive motion under § 2255. Therefore, this court lacks jurisdiction over Pabellon’s § 2255, and the motion is summarily dismissed.

Therefore, it is

ORDERED that Pabellon’s § 2255 motion is summarily dismissed.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
August 25, 2005

NOTICE OF RIGHT TO APPEAL

The movant is hereby notified that she has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.